

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RANDALL MARQUISE EMBRY,
Petitioner,

v.

STEVE SINCLAIR,
Respondent.

NO. C14-5360 BHS-KLS

**ORDER GRANTING MOTIONS
TO STAY AND FOR EXTENSION**

Petitioner Randall Marquise Embry moves to stay his federal habeas petition pending the outcome of a state court proceeding. Dkt. 11. Respondent Steve Sinclair is not opposed to the stay and moves for an extension of time to respond to the federal habeas petition until 45 days after the state court has issued its decision. Dkts. 17 and 18. The Court finds that this matter should be stayed pending resolution of Mr. Embry's state court proceedings and the motion for extension granted.

DISCUSSION

Mr. Embry's federal habeas petition challenges his custody under a state court judgment and sentence imposed for his conviction of attempted first degree murder, conspiracy to commit first degree murder, and first degree unlawful possession of a firearm. Dkt. 9. He raises four grounds of prejudicial admission of evidence regarding gang membership,

1 prejudicial joinder of co-defendants, insufficient evidence, and sentencing error regarding the
2 firearm enhancement. *Id.* Mr. Embry moves to stay the federal proceedings based on a
3 recently filed personal restraint petition in the Washington Court of Appeals, in which he raises
4 multiple grounds, including the four that are at issue in his federal habeas petition. Dkt. 17,
5 Exhibit 1 (Personal Restraint Petition, Washington Court of Appeals Case No. 46193-5-II).
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7 The Court may stay a petition where the stay would be a proper exercise of discretion.
8 *Rhines v. Weber*, 544 U.S. 269, 276 (2005); *see also Fetterly v. Paskett*, 997 F.2d 1295 (9th
9 Cir. 1993); *Calderon v. United States Dist. Court for Northern Dist. of California*, 144 F.3d
10 618, 620 (9th Cir. 1998); *Anthony v. Cambra*, 236 F.3d 568 (9th Cir. 2000).
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12 Mr. Embry contends that a stay is necessary so that he may litigate his recently filed
13 personal restraint petition in the Washington appellate courts. He states that he filed his federal
14 petition to avoid running afoul of the federal statute of limitations. Dkt. 11. Respondent does
15 not object to the requested stay but asks that the Court grant an extension of time to answer the
16 petition such that the answer becomes due 45 days after the stay of proceedings is lifted. Dkts.
17 17 and 18.

18 Accordingly, it is **ORDERED**:

19 (1) Petitioner's motion to stay (Dkt. 11) is **GRANTED** and this matter is **STAYED**
20 pending resolution of the state court proceedings. Petitioner shall advise the Court within
21 **thirty (30)** days of receiving a final State court ruling.
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23 (2) Respondent's motion for extension (Dkt. 18) is **GRANTED**. Respondent shall
24 file his Answer within 45 days after the stay in this matter is lifted. The Answer will be treated
25 in accordance with Local Rule CR 7. Accordingly, upon receipt of the Answer the Clerk will
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1 note the matter for consideration on the fourth Friday after the answer is filed, Petitioner may
2 file and serve a response not later than on the Monday immediately preceding the Friday
3 appointed for consideration of the matter, and Respondent may file and serve a reply brief not
4 later than the Friday designated for consideration of the matter.
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6 (3) The Clerk shall send copies of this Order to Petitioner and counsel for
7 Respondent.

8 **DATED** this 7th day of July, 2014.
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12 Karen L. Strombom
13 United States Magistrate Judge
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